

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3716 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

T R SHARMA

Versus

O N G C

Appearance:

MR IS SUPEHIA for Petitioners

SERVED for Respondent No. 1, 2

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 22/04/96

ORAL JUDGEMENT

The petitioner, who were working as Driver Grade I (Winchman) with the O.N.G.C., seek a direction on the respondents to place them in the pay scale of Rs.480-820 with effect from 25.4.1980 with the designation of Winch Operator Grade I and to pay the arrears on that basis. They also seek a direction that the respondents should promote them as Senior Winch Operators in the pay scale of Rs.530-1060 by modifying their orders of promotion to

the post of Winch Operators Grade II in the pay scale of Rs.440-758 and to pay arrears on that basis. They finally seek a direction on the respondents to pay all of them special allowance at a uniform rate of Rs.60/- from 1977 and arrears on that basis.

The petitioners were initially recruited as Truck Drivers somewhere between 1961 and 1963. Thereafter, they came to be promoted as Heavy Truck Drivers between 1965 and 1967. Earlier, the petitioners were governed by Oil and Natural Gas Commission (Recruitment and Promotion) Regulations, 1974, which came to be repealed by the subsequent Regulations of 1980, which came into force from 25.4.1980. Before coming into force of these 1980 Regulations, the petitioners were put in the scale of rs.410-720 from 1.4.1979 in the post of Driver Grade I (Winchman). The case of the petitioners is that on coming into force of the O.N.G.C. (Recruitment and Promotion) Regulations, 1980, the category of Heavy Truck Driver came to be bifurcated into three categories, i.e. Winch Operator Grade I, Winch Operator Grade II and Winch Operator Grade III. It is submitted that the petitioners were Driver Grade I (Winchman) and, therefore, they were entitled to the pay scale of Rs.480-820, which was meant for Winch Operator Grade I. They were, however, wrongly placed in the pay scale of Rs.410-720, which was meant for Winch Operator Grade III. It was further argued that the petitioners had completed more than 18 years of total service and, therefore, they were entitled to the post of Winch Operator Grade I. It was also argued that all the incumbents of the post of Driver Grade I, shown in the seniority list as on 1.4.1979, were initially recruited as Truck Drivers and later, promoted as Heavy Truck Drivers. Though they were in a common seniority list of Driver Grade I, to which posts they were subsequently promoted and were doing same kind of work, they were not given the higher pay scale of Rs.530-1060, which was given to one similarly situated Shri Soti Chand. It was then argued all these petitioners had undergone similar training of winch operation and were, therefore, entitled to uniform special allowance.

The facts on record disclose that the post of Driver Grade I (Winchman) was redesignated as Winch Operator Grade III. Under the O.N.G.C. (Recruitment and Promotion) Regulation, 1980, designations of some of the categories were changed and a list, indicating the earlier designations and the new designations in different pay scales, was published as Annexure 'A' of the Office Order dated 25th April, 1980. The O.N.G.C. (Recruitment and Promotion) Regulations, 1980 were framed

in exercise of powers conferred by Section 32 of the O.N.G.C. Act by the Commission, with the prior approval of the Central Government and these Regulations have, therefore, statutory force. In Regulation 4 of the said Regulations, categories of posts, scales of pay, qualifications and other matters connected therewith were provided for and these particulars were encapsuled in Schedule I thereto. Under the said Schedule, the posts of Senior Winch Operator (Rs.530-1060), Winch Operator Grade I (Rs.480-820), Winch Operator Grade II (Rs.440-758) and Winch Operator Grade III (Rs.410-720) appear at Serial Nos.46,47,48 and 49, respectively. In column 5, against these entries, it is indicated that the post of Senior Winch Operator is to be filled in by promotion, for which the eligibility is indicated in column 7, namely, six years as Winch Operator Grade I. For the post of Winch Operator Grade I, which is also to be filled in by promotion, the eligibility is experience of six years as Winch Operator Grade II. In the same way, for promotion to Winch Operator Grade II, the requirement is experience of six years as Winch Operator Grade III. It is, therefore, clear that Winch Operator Grade III in the scale of Rs.410-720 was equivalent to Driver Grade I (410-720) and cannot, except by way of Promotion, claim promotion to Grade II. Therefore, the claim of the petitioners, who were Driver Grade I in the scale of Rs.410-720 for being given the higher scales of Winch Operator Grade II, Winch Operator Grade I or Senior Winch Operator merely on the coming into force of the said Regulations of 1980, is wholly misconceived. As noted above, in the list of categories of change in designation under the revised Regulations of 1980, the post of Driver Grade I was equated with Winch Operator Grade III. Though the posts were in the scale of Rs.410-720, the requirement of six years experience for promotion to the higher grades is necessary for each of the respective categories. Therefore, for promotion to Grade II, six years experience in Grade III is required, for promotion to Grade I, six years experience in Grade II is required and for promotion to Senior Winch Operator, six years experience in Grade I is required. Therefore, the experience in the post lower to Grade III, which the petitioners are seeking to compute, cannot be computed under the promotion policy. From this angle, the petitioners, who have not completed the requisite number of years, could not claim eligibility for promotion to higher grades. Therefore, the claim of the petitioners that they should be given pay scale of Rs.480-820, which was of Winch Operator Grade I, from 25.4.1980 or that they should be given still higher scale of Rs.530-1060, which is meant for the post of Senior

Winch Operator, is wholly misconceived and baseless. Merely because, by mistake in some communications some of the petitioners were described as Winch Operator I (which mistake was corrected), the petitioners cannot claim any right for holding a higher post. In the affidavit-in-reply of the Commission, it has been stated in paragraph 5 that there was a corrigendum issued on 25.8.1983, correcting the mistake, by showing the correct designation as Winch Operator Grade III. It is clear that the Regulations of 1980 did not contemplate any benefit either of promotion or pay scale, as is sought to be claimed by the petitioners. An employee, who had put in at least six years service in the lower category, became eligible for consideration for promotion against a functional vacancy in the higher category under the Rules of 1980. The petitioners were accordingly promoted with effect from 1.1.1983 to the post of Winch Operator Grade II in the case of Rs.440-758. Thereafter, they were promoted as Senior winch Operator, i.e. in class II scale, with effect from 1.1.1986 and all of them, except Hira Singh, retired, on superannuation, as stated in the additional affidavit filed on 21st March, 1996.

Soti Chand, whose instance is cited for the ground of discrimination in giving the pay scale of Rs.530-1060, was promoted in that scale by virtue of order dated 16.9.1980. It is stated in the affidavit-in-reply that the case of the petitioner No.5 Pannalal did not stand on the same footing, as was sought to be made out in the petition. It is stated that Pannalal could not be given the pay scale of Rs.530-1060 because he had not completed 12 years of service in the relevant lower categories. It appears that in the past, after prolonged discussions and understandings arrived at with the recognised unions, Office Order was passed on 18.9.1980, laying down interim promotion policy. The memorandum of settlement was arrived at between the Management and the Unions on 22.11.1979 and the pay scale of Rs.460-720 was revised to Rs.530-1060. Accordingly, question arose whether Driver Grade I should be promoted as Senior Winch Operator in the scale of Rs.530-1060 or Winch Operator Grade II in the scale of Rs.440-758 as per the Regulations of 1980. It was represented on behalf of the Union that since some of the employees were already promoted in the scale of Rs.460-720 (revised to Rs.530-1060), it would amount to demotion and, therefore, it was agreed as a one time measure to promote the then Driver Grade I in the pay scale of Rs.530-1060. The extract of these minutes are reproduced in the affidavit-in-reply as under :-

"... b) Promotion of existing Winch Operator Gd.

III.

It was agreed by the union representatives that only the service rendered by the existing Winchmen as Drive Gd. I (W)/Winch Operator may be counted for calculating the qualifying period of service for promotion. Taking the extraordinary nature of the case and their peculiar situation into account, Member (Per) agreed as a one-time decision, not to form any precedent, in any other case as accepted by the union representatives, that the existing Winch Operator Gd. III would be considered for promotion as Senior Winch Operator in the scale of pay of Rs.530-1060...."

The petitioners, admittedly, did not fall in the aforesaid category, as they had not put in 12 years as Driver Grade I, redesignated as Winch Operator Grade III as on 25.4.1980. These petitioners were promoted to the post of Driver Grade I, redesignated as Winch Operator Grade III between 1974 and 1980 and, therefore, they were not entitled to be promoted to the post of Senior Winch Operator in the scale of Rs.530-1060 or even in the scale of Rs.480-820 with effect from 25.4.1980. The petitioners were, therefore, not entitled to the said higher scale of Rs.530-1060, or Rs.480-820.

Even the claim of the petitioners for a uniform special allowance is misconceived, because the placement of employees in different sections determines the special pay which they should be given. It is brought on record that Drivers Grade I, redesignated as Winch Operator Grade III, were being posted in three different Departments, namely, Electrologging, Geology and production, at various three centres in the Commission and they were given the special pay of Rs.60/-, Rs.45/-, and Rs.30/-, respectively, on the basis of certain demands raised by the recognised Unions, and settlements arrived at. It is, therefore, clear that different special pay is prescribed for persons working in different departments. What special pay should be prescribed in relation to the work of a Department would be a matter for the Management to decide and since the different special pay for three Departments are not shown to be arbitrary in any manner, there is no warrant for interference by this Court, by directing a uniform special pay for all the three Departments.

Under the above situation, the contentions raised

on behalf of the petitioners cannot be accepted and the petition fails. Rule is discharged, with no order as to costs.

(sd/-R.K.ABICHANDANI, J.)